

155 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

NextEra Energy Transmission West, LLC

Docket No. ER15-2239-002

ORDER ON COMPLIANCE

(Issued June 16, 2016)

1. On February 9, 2016, NextEra Energy Transmission West, LLC (NEET West) submitted a compliance filing containing revisions to its Transmission Owner Tariff (TO Tariff), including a forward-looking cost-of-service formula rate template (Appendix III) and implementation protocols (together, Formula Rate) in response to the directives of the Commission's January 8, 2016 order accepting and suspending, for a nominal period, NEET West's proposed TO Tariff, subject to condition and refund.¹ In this order, we accept NEET West's compliance filing, subject to condition, to become effective October 20, 2015, as discussed below.

I. Background

2. On July 22, 2015, NEET West, a subsidiary of NextEra Energy Transmission, LLC, which in turn is a subsidiary of NextEra Energy Capital Holdings, Inc., filed with the Commission a proposed TO Tariff including a transmission Formula Rate to recover costs associated with two transmission projects awarded to NEET West through California Independent System Operator Corporation's (CAISO) competitive transmission developer selection process. NEET West's Formula Rate is designed to calculate its annual transmission revenue requirement for inclusion in CAISO's transmission access charge. NEET West also requested, pursuant to sections 205² and

¹ *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009 (2016) (January 8 Order).

² 16 U.S.C. § 824d (2012).

219³ of the Federal Power Act (FPA) and Order No. 679,⁴ authorization to obtain several incentive rate treatments for its two CAISO-selected transmission projects.

3. On January 8, 2016, the Commission accepted and suspended, for a nominal period, the TO Tariff, effective October 20, 2015, subject to condition and refund.⁵ The Commission granted in part and denied in part NEET West's requests for certain transmission rate incentives and set NEET West's proposed base return on equity for hearing and settlement judge procedures. The Commission also directed NEET West to submit a compliance filing to revise its TO Tariff and Formula Rate. Among other things, the Commission directed NEET West to remove language from its TO Tariff that did not conform to the transmission owner tariffs of other similarly situated CAISO participating transmission owners.⁶ The Commission explained that, while NEET West's Formula Rate generally conformed to other Commission-accepted formula rates, there were several variances that NEET West had not explained, as well as errors that NEET West needed to correct.⁷

4. On February 9, 2016, NEET West submitted its compliance filing. NEET West has removed from its TO Tariff language between sections 8 and 8.1, 9 and 9.1, and 10 and 10.1 regarding the applicability of these sections when NEET West is not the "lead Participating Transmission Owner," a term that NEET West did not define. NEET West also eliminated section 16.12 from its TO Tariff table of contents, and corrected typographical errors in sections 9.1.3 and 10.6.2.⁸ With regard to its Formula Rate, NEET West has offered explanations for several variances and proposed revisions to correct various typographical errors, as well as revised its Appendix III formula rate template to more clearly specify certain calculations and instructions, as discussed in further detail below.

³ 16 U.S.C. § 824s (2012).

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁵ January 8 Order, 154 FERC ¶ 61,009.

⁶ *Id.* P 98.

⁷ *Id.* PP 102, 105.

⁸ NEET West Transmittal at 2.

5. Among other things, the Commission directed NEET West to describe how the gross plant and net plant allocators will be derived and to clarify the meaning of the references to gross plant and net plant equaling one on Lines 7 and 15 of Column 2.⁹ In response, NEET West states that the gross plant allocator will be calculated as the transmission gross plant divided by the company's total gross plant, and the net plant allocator will be calculated as the transmission net plant divided by the company's total net plant. However, NEET West states that when total company plant is zero, these formulas do not return a defined value due to division by zero, and in that limited circumstance the gross plant and net plant allocators are set to 1. According to NEET West, this is a necessary allocation for a transmission-only company for the period before the first facility is placed in service, when the formula would produce an indeterminate number.¹⁰

6. The Commission noted in the January 8 Order that NEET West had incorporated elements of the regulatory asset into its Formula Rate as an adjustment to rate base, but that NEET West's Appendix III did not reflect Account 566 and/or the amortized portion of the regulatory asset. The Commission directed NEET West to explain why these items were not accounted for in the Formula Rate or revise the Formula Rate to do so.¹¹ In response, NEET West references the explanatory note on Line 147 (Amortization to Account 566) in Attachment 2, which states that, pursuant to Attachment 11, all amortizations of the Regulatory Asset are to be booked to Account 566 over the period authorized by the Commission. NEET West also states that Line 147 serves as an input to Line 33b, which NEET West has incorporated as a new line item within Appendix III.¹²

7. The Commission directed NEET West to explain why 150 basis points was included within the composition of its affiliate's, Lone Star Transmission, LLC (Lone Star), construction loan and why it should be equally applicable to establish NEET West's initial long term debt cost rate.¹³ In response, NEET West states that the 150 basis point adder included in Lone Star's debt cost rate represented the credit spread

⁹ January 8 Order, 154 FERC ¶ 61,009 at P 108.

¹⁰ NEET West Transmittal at 3.

¹¹ January 8 Order, 154 FERC ¶ 61,009 at P 112.

¹² NEET West Transmittal at 4; *see also* NEET West February 9 Compliance Filing, Ex. B.

¹³ January 8 Order, 154 FERC ¶ 61,009 at P 116.

above the risk-free rate charged by third-party lenders after a competitive process. NEET West states that it uses the same 150 basis point credit spread as Lone Star due to the similar nature of the two projects, such as being rate-regulated transmission projects constructed by new entrants. NEET West states that this is a conservative assumption because, due to the much smaller size of the NEET West investments, it is unlikely that NEET West will be able to obtain external financing at a rate comparable to, or lower than, the rate obtained by Lone Star.¹⁴

8. The Commission directed NEET West to revise Note A in Attachment 2 to clearly describe the source of the monthly balance data.¹⁵ In response, NEET West states that it has revised Note A to indicate that the source for the monthly balance data is internal company records.¹⁶

9. The Commission also noted that NEET West had not described any rationale for applying a test to determine which unfunded reserves should be credited to rate base. The Commission directed NEET West to either clarify what test will be used in this context or justify why such a test is needed to determine NEET West's unfunded reserves, or revise Line 127 of Attachment 2 to indicate that any unfunded reserves will be credited against rate base.¹⁷ In response, NEET West states that it has modified Attachment 2 to indicate that any unfunded reserves will be credited against rate base. NEET West explains that, in order for a reserve account or portion of a reserve account to be considered "unfunded," three criteria must be met: the reserve must have (1) not been set aside in a trust, escrow or restricted account; (2) been collected from customers through cost accruals to accounts that are recovered under the Formula Rate; and (3) not been created by an offsetting balance sheet liability. NEET West states that, since not all reserves are unfunded, the unfunded reserves must be determined using the above criteria. NEET West states that it has modified the note in Attachment 7 to clarify these criteria.¹⁸

¹⁴ NEET West Transmittal at 5.

¹⁵ January 8 Order, 154 FERC ¶ 61,009 at P 121.

¹⁶ NEET West Transmittal at 6.

¹⁷ January 8 Order, 154 FERC ¶ 61,009 at P 125.

¹⁸ NEET West Transmittal at 7.

II. Notice of Filing and Responsive Pleadings

10. Notice of NEET West's February 9, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 8489 (2016), with interventions and protests due on or before March 1, 2016. The California Department of Water Resources State Water Project (SWP) filed comments. NEET West filed an answer to SWP's comments.

11. SWP requests that the Commission clarify here that NEET West may only apply the 150 basis point adder associated with Lone Star's construction loan to the initial long term cost of debt, and not to future long term debt calculations. In addition, SWP also requests that the Commission direct NEET West to clarify that the term "third party debt" in Note G of Appendix III refers to debt booked in accounts listed in Attachment 2, Lines 161-163.¹⁹

12. In its answer, NEET West states that there is nothing in Note G or Attachment 2 of Appendix III to suggest that any component of the 1.75 percent cost of debt imputed for the initial period – whether the risk free component or the 150 basis point credit spread – will be added on to NEET West's cost of debt once long-term debt is issued. NEET West contends that once it issues long-term debt, the cost of long-term debt will be determined solely based on NEET West's actual debt costs by using Attachment 2.²⁰

13. NEET West clarifies that, once it has issued debt to a third party that is properly recorded in Account Nos. 221-224, whether that debt is issued to an unaffiliated third party or via an inter-affiliate note, the cost of such long-term debt will be determined using Attachment 2 of the Formula Rate. NEET West notes that the meaning of the phrase "third party debt" in Note G was not raised in the January 8 Order, and therefore argues that SWP's request is outside the scope of the proceeding.²¹

III. Discussion

A. Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the

¹⁹ SWP Comments at 2.

²⁰ NEET West Answer at 1.

²¹ *Id.* at 1-2 (citing *Union Light, Heat and Power Co.*, 111 FERC ¶ 61,341, at P 11 (2005)).

decisional authority. We will accept the answer filed by NEET West because it has provided information that has assisted us in our decision-making process.

B. Substantive Matters

15. We accept NEET West's compliance filing, subject to condition.²² Except as discussed below, NEET West's explanations and proposed TO Tariff and Formula Rate revisions satisfy the Commission's directives in the January 8 Order. We direct NEET West to submit a further compliance filing within 30 days of the date of this order to address the issues noted below.

16. We accept NEET West's proposed revisions to Lines 7 and 15 of Appendix III to provide greater clarity regarding how the gross plant and net plant allocators are derived within NEET West's Appendix III, subject to condition.²³ However, we find that NEET West's response to the Commission's directive to clarify the meaning of the references to gross plant and net plant allocators equaling one on Lines 7 and 15 is insufficient, and we note that other utilities without transmission in service have a transmission plant allocator of zero.²⁴ NEET West has not persuaded us that it is in a different position that would justify its proposal. We therefore direct NEET West to revise the language on Line 7, Column 2 and Line 15, Column 2 to show that, when total company plant is zero, the gross plant and net plant allocators are also zero.²⁵

17. We also accept, subject to condition, NEET West's proposed revisions in response to the Commission's directive to reflect Account 566 and/or the amortized portion of the

²² The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

²³ NEET West Transmittal at 3; *see* January 8 Order, 154 FERC ¶ 61,009 at P 108.

²⁴ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at P 38 (2011) (finding that, as an entity without transmission in-service, Central Minnesota Municipal Power Agency will have a transmission plant allocator of zero).

²⁵ In particular, Line 7 of Appendix III should read, in part, "If line 5=0, GP=0", and Line 15 of Appendix III should read, "If line 15=0, NP=0." With regard to NEET West's concerns regarding potential division by zero, we note that using this language would not result in division by zero or produce an indeterminate result.

regulatory asset in Appendix III.²⁶ However, while NEET West has proposed to revise Lines 33, 33a, and 33b to further illustrate how elements of the regulatory asset are incorporated as an adjustment to rate base, NEET West inaccurately references Form 1, Page 321, Line 85.b as the appropriate Form 1 reference for Account 566 on Line 33. To correct this error, we direct NEET West to revise Line 33 of Appendix III to reference instead Form 1, Page 321, Line 97.b.

18. We also accept NEET West's response to the Commission's directive to explain the composition of its long-term debt cost rate.²⁷ In response to SWP's concern that NEET West should only apply the 150 basis point adder to the initial long-term cost of debt, and not to future debt calculations, we are satisfied with NEET West's explanation that the 150 basis point credit spread will only be incorporated for the cost of debt calculated for the initial period, and that once long-term debt is used, actual debt costs will be solely determined based on the calculation in Attachment 2.

19. As to SWP's request that we direct NEET West to clarify the term "third party debt," we find that SWP's argument is outside the scope of this proceeding. The Commission has repeatedly held that compliance filings are limited to the specific directives of the Commission's order; the sole issue on review is whether the filing party has complied with those directives.²⁸ We agree with NEET West that the Commission did not direct it to clarify the term "third party debt" in the January 8 Order. Even if it were within the scope of this proceeding, we disagree with SWP's assertion that the term "third party debt" refers to debt booked in accounts listed in Attachment 2, Lines 161-163. NEET West has explained that, whether debt is issued to an unaffiliated third party or via an inter-affiliate note, the cost of such long-term debt will be determined using Attachment 2. Further, NEET West states in Note G of Appendix III that it will use Attachment 2 as the methodology to determine its cost of debt once third party debt is obtained, and in Attachment 2, Lines 161-163, NEET West has labeled the accounts as Account Nos. 221-224 and included accurate Form 1 references.

²⁶ NEET West Transmittal at 4; *see* January 8 Order, 154 FERC ¶ 61,009 at P 112.

²⁷ NEET West Transmittal at 5; *see* January 8 Order, 154 FERC ¶ 61,009 at P 116.

²⁸ *See Union Light, Heat and Power Co.*, 111 FERC ¶ 61,341 (rejecting a protesting party's comments because it raised a new issue not directly related to the Commission-directed revisions); *Pacific Gas and Elec. Co.*, 109 FERC ¶ 61,336 (2004) (rejecting revisions made by the complying party that were in addition to those directed by the Commission); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376 (1997) ("The sole purpose of a compliance filing is to make the revisions directed by the Commission.").

20. We also accept NEET West's response to the Commission's directive to revise Note A in Attachment 2 to clearly describe the source of the monthly balance data, subject to condition.²⁹ As the Commission noted in the January 8 Order, it appears that Note A is a source for monthly balance data in the plant in service, accumulated depreciation, and adjustments to rate base worksheets. It appears NEET West has partially complied with this directive by revising Note A to indicate that the source of the monthly balance data is internal company records. However, NEET West continues to include a reference to Note A within Attachment 2, adjustments to rate base worksheet that is not clearly defined and we therefore accept this revision subject to condition. We direct NEET West to further revise Note A in its Attachment 2, adjustments to rate base worksheet to clearly describe the source of the monthly balance data.

21. Finally, we accept NEET West's response to the Commission's directive on unfunded reserves, subject to condition.³⁰ While NEET West has modified Attachment 2 to more clearly demonstrate the relationship between Attachment 2 and Attachment 7, NEET West has not modified Line 127 of Attachment 2 to explicitly state that any unfunded reserves will be credited against rate base. We direct NEET West to make this change. Additionally, while NEET West states that it has revised the note in Attachment 7, it does not appear that the text of the note in Attachment 7 has been revised in NEET West's Appendix III. We direct NEET West to revise the note in Attachment 7 to match the language indicated in its transmittal letter.

The Commission orders:

(A) NEET West's compliance filing is hereby accepted, subject to condition, effective October 20, 2015, as discussed in the body of this order.

²⁹ NEET West Transmittal at 6; *see* January 8 Order, 154 FERC ¶ 61,009 at P 121.

³⁰ NEET West Transmittal at 7; *see* January 8 Order, 154 FERC ¶ 61,009 at P 125.

(B) NEET West is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.